

A DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor

FEDERAL COURT (KUALA LUMPUR) — ORIGINAL JURISDICTION
NO 1 OF 2002

B AHMAD FAIRUZ (PCA), HAIDAR CJ (MALAYA) AND DENIS ONG JCA
30 JANUARY 2003

Constitutional Law — Courts — Jurisdiction of High Court — Plaintiff filed action at High Court — Plaintiff subsequently proclaimed the Sultan of Selangor — Whether High Court continued to exercise jurisdiction to adjudicate on suit — Federal Constitution arts 181(2), 182(2) and (3)

C
Constitutional Law — Courts — Power to transfer cases — Plaintiff filed action at High Court — Plaintiff subsequently proclaimed the Sultan of Selangor — Whether High Court had jurisdiction or power to transfer suit to Special Court established under Part XV of Federal Constitution

D
Constitutional Law — Suit involving government or ruler — Immunity of sovereign — Plaintiff filed action at High Court — Plaintiff subsequently proclaimed the Sultan of Selangor — Whether term ‘Ruler’ in arts 181, 182 and 183 of the Federal Constitution should be construed to mean Ruler at the time when the cause of action arose — Maxim ‘rex nunquam moritur’ — Whether question of when cause of action arose was relevant to construction of term ‘Ruler’

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On 6 May 1998, the plaintiff filed a writ of summons and statement of claim against the defendants at the High Court in Kuala Lumpur. On 3 July 1998, the defendants filed a defence and counterclaim. On 24 April 1999, the plaintiff was appointed the Regent of Selangor to exercise the functions as ‘Sultan’ when his father Al-Marhum DYMM Sultan Salahuddin Abdul Aziz Shah ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed the 11th Yang di-Pertuan Agong. On 30 July 2001, the High Court in Kuala Lumpur, by consent of the parties, ordered to be referred to the Federal Court by way of a special case under s 84 of the Courts of Judicature Act 1964, the question of whether the plaintiff, who was appointed to exercise the functions as ‘Sultan’ was a ‘Ruler’ for the purposes of arts 181, 182 and 183 of the Federal Constitution. The Federal Court answered the question in the negative. On 21 November 2001, Sultan Salahuddin Abdul Aziz Shah Al Haj passed away and on 22 November 2001, the plaintiff was proclaimed the Sultan of Selangor. This case came before the Federal Court in the same manner of a special case referred by the High Court in Kuala Lumpur for the Federal Court’s decision on seven questions. Essentially, the issues posed by the questions were whether: (a) having regard to the change of status of the plaintiff and to arts 181(2), 182(2) and (3) of the Federal Constitution, the High Court continued to exercise jurisdiction to adjudicate on the suit which was commenced before such change of status (‘issue (a)’); and (b) the High Court had the jurisdiction or power to transfer the suit to the Special Court established under Part XV of the Federal

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Constitution ('issue (b)'). Since the suit was brought in the High Court in Kuala Lumpur before 22 November 2001 and was pending trial there, the contention by the defendants' counsel was that the suit should remain in the High Court to be tried there and that the term 'Ruler' in arts 181, 182 and 183 of the Federal Constitution should be construed to mean Ruler at the time when the cause of action arose. Both the plaintiff's counsel and the senior federal counsel took the stand that the suit should be tried in the Special Court because the plaintiff was now the Ruler of the State of Selangor regardless of when he became Ruler.

Held:

- (1) The fact that Sultan Salahuddin Abdul Aziz Shah Al Haj passed away on 21 November 2001 and that on 22 November 2001, the plaintiff was proclaimed the Sultan of Selangor meant that there was a change — both status wise and functionally of the plaintiff from a Crown Prince and Regent to a Sultan and Ruler of the State of Selangor. Therefore, from 21 November 2001, the plaintiff was thus a 'Ruler', like his father, in the full sense of that word in art 181(1) of the Federal Constitution and possessed the attributes of sovereignty, prerogatives, powers and jurisdiction in art 181(1) (see pp 8A, 12A–D).
- (2) The plaintiff, although a Ruler now, was liable to be sued in his personal capacity. As Ruler, the plaintiff may also sue in his personal capacity. Such proceedings whether by or against the plaintiff as a Ruler in his personal capacity must be brought in the Special Court (see p 13G–H).
- (3) In the instant case, the plaintiff was officially the Ruler of Selangor in the full sense of the word 'Ruler' in arts 181, 182 and 183 of the Federal Constitution on and after 22 November 2001. It followed therefore that if the suit were brought on or after that date, it would have to be brought in and tried by the Special Court. Notwithstanding that the suit was brought by the plaintiff in the High Court in Kuala Lumpur before 22 November 2001 and was pending trial there, upon the plaintiff's accession as a Ruler, the High Court ceased to have jurisdiction over the plaintiff and thus could no longer continue to exercise jurisdiction to adjudicate on the suit (see pp 14E–G, 15A).
- (4) Having regard to the principles of law on accession, the Latin maxim *rex nunquam moritur* or 'the King never dies' and art 181(1) of the Federal Constitution, the question of when the cause of action arose was irrelevant to the construction of the term 'Ruler'. As such, it was unnecessary to spell out 'when' the cause of action arose in art 182(3) of the Federal Constitution. The term 'Ruler' in arts 181, 182 and 183 of the Federal Constitution was a Ruler for all time and included his successor in office (see pp 14H–15A).

- A (5) Accordingly, this action would have to be commenced afresh by the plaintiff in the Special Court and pursuant to art 183 of the Federal Constitution, the consent of the Attorney General would have to be obtained by the defendants for the counterclaim against the plaintiff (see p 15F).
- B (6) Article 121(1) of the Federal Constitution expressly provided that 'the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.' Such powers of transfer were contained in the Courts of Judicature Act 1964 and the Subordinate Courts Act 1948 and did not extend to the Special Court. The jurisdiction of the Special Court was
- C both original and final, the decision of which cannot be challenged in any court, on any ground. Accordingly, the High Court had no powers to transfer the suit to the Special Court (see pp 15H-16A).

D [Bahasa Malaysia summary]

Pada 6 Mei 1998, plaintiff telah memfailkan satu writ saman dan pernyataan tuntutan terhadap defendan-defendan di Mahkamah Tinggi di Kuala Lumpur. Pada 3 Julai 1998, defendan-defendan telah memfailkan satu pembelaan dan tuntutan balas. Pada 24 April 1999, plaintiff telah dilantik sebagai Raja Muda Selangor untuk melaksanakan fungsi-fungsi seorang 'Sultan' apabila ayahanda beliau Al-Marhum DYMM Sultan Salahuddin Abdul Aziz Shah ibni Al-Marhum Hisamuddin Alam Shah dilantik sebagai Yang di-Pertuan Agong ke-11. Pada 30 Julai 2001, Mahkamah Tinggi di Kuala Lumpur, dengan persetujuan pihak-pihak tersebut, diperintahkan untuk merujuk kepada Mahkamah Persekutuan melalui satu kes khas di bawah s 84 Akta Kehakiman Mahkamah 1964, persoalan tentang sama ada plaintiff, yang telah dilantik untuk melaksanakan fungsi-fungsi sebagai seorang 'Sultan' adalah seorang 'Ruler' bagi tujuan perkara-perkara 181, 182 dan 183 Perlembagaan Persekutuan. Mahkamah Persekutuan menjawab persoalan tersebut secara negatif. Pada 21 November 2001, Sultan Salahuddin Abdul Aziz Shah Al Haj telah mangkat dan pada 22 November 2001, plaintiff telah diisytiharkan sebagai Sultan Selangor. Kes ini dihadapkan ke Mahkamah Persekutuan sama seperti satu kes khas yang dirujuk oleh Mahkamah Tinggi di Kuala Lumpur untuk keputusan Mahkamah Persekutuan berhubung tujuh persoalan. Pada dasarnya, isu-isu yang diutarakan oleh persoalan-persoalan tersebut adalah sama ada: (a) dengan mengambilkira pertukaran terhadap kedudukan plaintiff dan terhadap perkara-perkara 181(2), 182(2) dan (3) Perlembagaan Persekutuan, Mahkamah Tinggi masih boleh terus menggunakan bidang kuasa untuk mengadili guaman yang telah bermula sebelum pertukaran kedudukan tersebut ('isu (a)'); dan (b) Mahkamah Tinggi mempunyai bidang kuasa atau kuasa untuk memindahkan guaman tersebut ke Mahkamah Khas yang ditubuhkan di bawah Bahagian XV

Perlembagaan Persekutuan ('isu (b)'). Memandangkan guaman tersebut telah dimulakan di Mahkamah Tinggi di Kuala Lumpur sebelum 22 November 2001 dan masih menunggu perbicaraan, hujah peguam defendan-defendan adalah bahawa guaman tersebut patut kekal di Mahkamah Tinggi untuk dibicarakan di situ dan bahawa terma 'Ruler' dalam perkara-perkara 181, 182 dan 183 Perlembagaan Persekutuan hendaklah ditafsirkan sebagai bermaksud Pemerintah pada masa apabila kausa tindakan wujud. Kedua-dua peguam plaintif dan peguam kanan persekutuan membuat pendirian bahawa guaman tersebut hendaklah dibicarakan di Mahkamah Khas kerana plaintif sekarang adalah Pemerintah Negeri Selangor dengan tidak mengira bila beliau menjadi Pemerintah.

Diputuskan:

- (1) Hakikat bahawa Sultan Salahuddin Abdul Aziz Shah Al Haj telah mangkat pada 21 November 2001 dan bahawa pada 22 November 2001, plaintif telah diisytiharkan Sultan Selangor bermakna bahawa terdapat pertukaran — kepada kedua-dua kedudukan dan fungsi plaintif daripada seorang Raja Muda dan Pemangku Raja kepada Sultan dan Pemerintah Negeri Selangor. Oleh itu, dari 21 November 2001, plaintif adalah seorang 'Ruler', seperti ayahanda beliau, dalam erti kata sebenar perkataan dalam perkara 181(1) Perlembagaan Persekutuan dan memiliki sifat-sifat kedaulatan, prerogatif, kuasa-kuasa dan bidang kuasa dalam perkara 181(1) (lihat ms 8A, 12A–D).
- (2) Plaintif walaupun seorang Pemerintah sekarang, boleh disaman dalam kapasiti peribadi beliau. Prosiding sedemikian sama ada oleh atau terhadap plaintif sebagai seorang Pemerintah dalam kapasiti peribadi beliau perlu dimulakan dalam Mahkamah Khas (lihat ms 13G–H).
- (3) Dalam kes semasa, plaintif secara sah adalah Pemerintah Negeri Selangor dalam erti kata sebenar perkataan 'Ruler' dalam perkara-perkara 181, 182 dan 183 Perlembagaan Persekutuan pada dan selepas 22 November 2001. Berikutan itu jika guaman tersebut dimulakan pada atau selepas tarikh tersebut, ia perlu dimulakan dan dibicarakan oleh Mahkamah Khas. Meskipun guaman tersebut telah dimulakan oleh plaintif di Mahkamah Tinggi di Kuala Lumpur sebelum 22 November 2001 dan masih menunggu perbicaraan, kenaikan takhta plaintif sebagai seorang Pemerintah, Mahkamah Tinggi tidak lagi mempunyai bidang kuasa ke atas plaintif dan oleh itu tidak boleh terus menggunakan bidang kuasa untuk mengadili guaman tersebut (lihat ms 14E–G, 15A).
- (4) Dengan mengambilkira prinsip-prinsip undang-undang berhubung kenaikan takhta, *maxim* Latin *rex nunquam moritur* atau 'the King never dies' dan perkara 181(1) Perlembagaan

- A Persekutuan, persoalan bila kausa tindakan timbul adalah tidak relevan untuk membentuk terma 'Ruler'. Oleh itu, adalah tidak perlu untuk menentukan 'bila' kausa tindakan timbul dalam perkara 182(3) Perlembagaan Persekutuan. Terma 'Ruler' dalam perkara-perkara 181, 182 dan 183 Perlembagaan Persekutuan adalah seorang Pemerintah pada setiap masa dan termasuklah pengganti beliau (lihat ms 14H-15A).
- B (5) Sewajarnya, tindakan ini perlu dimulakan semula oleh plaintif di Mahkamah Khas dan menurut perkara 183 Perlembagaan Persekutuan, persetujuan Peguam Negara perlu diperolehi oleh defendan-defendan untuk tuntutan balas terhadap plaintif (lihat ms 15F).
- C (6) Perkara 121(1) Perlembagaan Persekutuan dengan nyata memperuntukkan bahawa 'the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.' Kuasa-kuasa pemindahan sedemikian terkandung dalam Akta Kehakiman Mahkamah 1964 dan Akta Mahkamah Bawahan 1948 dan tidak meliputi Mahkamah Khas. Bidang kuasa Mahkamah Khas adalah kedua-duanya asli dan muktamad, keputusannya yang tidak boleh dicabar dalam mana-mana mahkamah, atas apa-apa alasan. Sewajarnya, Mahkamah Tinggi tidak mempunyai apa-apa kuasa untuk memindahkan guaman tersebut ke Mahkamah has (lihat ms 15H-16A).]
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Notes

- F For cases on immunity of sovereign, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue) para 1824.
- For cases on jurisdiction of High Court, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1444-1445.
- For cases on power to transfer cases, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1453-1455.

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Cases referred to

- DYTM Tengku Idris Shah ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor [2002] 2 MLJ 11; [2002] 4 MLJ 289 (refd)
- H Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'ayatuddin Al Mu'Adzam Shah [1996] 1 MLJ 617 (refd)
- Karpal Singh v Sultan of Selangor [1988] 1 MLJ 64 (refd)
- Dato Menteri Othman bin Baginda, Dato' Menteri & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (refd)
- I Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor [1999] 1 MLJ 266 (refd)

Legislation referred to

Constitution (Amendment) Act 1993 (Act A848)

Constitution of the State of Selangor arts 6(1), (2)

Courts of Judicature Act 1964 s 84

Federal Constitution arts 38(4), 70(1), 71(1), 121(1), 159(5),
181(2), 182(2), (3), (4), (6), 183, Parts IX, XV

Rules of the Special Court 1994

Subordinate Courts Act 1948

Appeal from: Suit No D1–22–1350 of 1998 (High Court, Kuala Lumpur)*Lim Kian Leong (Low Chi Cheng with him) (Lim Kian Leong & Co) for the appellant.**Bastian Vendargon (Philip Chai Lip Keong and Dhayana Shila with him) (Soo Thien Ming & Nashrah) for the defendants.**Dato' Abdul Aziz bin Abdul Rahman (Syed Marzidy bin Syed Marzuki with him) (Senior Federal Counsel) watching brief.***Denis Ong JCA** (delivering judgment of the court): In the sequel of the plaintiff's accession as the ninth Sultan of Selangor upon the demise of his father, His Royal Highness Sultan Salahuddin Abdul Aziz Shah Al Haj on 21 November 2001 who was the former Sultan and Ruler of the State of Selangor, this case comes before the Federal Court for the second time in the same manner of a special case referred by the same High Court in Kuala Lumpur and pursuant to s 84 of the Courts of Judicature Act 1964 ('the CJA') for our decision on seven questions namely:

- (1) As the plaintiff is now the Sultan of Selangor from 22 November 2001 and therefore the Ruler of the State of Selangor, does the High Court of Malaya continue to have jurisdiction to adjudicate on the plaintiff's claim, which was filed before the plaintiff became the Ruler of the State of Selangor, in the light of arts 182(2) and 182(3) of the Federal Constitution?
- (2) If the answer to question 1 is in the negative, does the High Court of Malaya or any other court constituted under Part IX of the Federal Constitution have jurisdiction and/or power to transfer the plaintiffs' action to the Special Court, which is constituted under art 182, Part XV of the Federal Constitution?
- (3) If the answer to question 2 is in the negative, does the plaintiff's claim have to be withdrawn and refiled in the Special Court?
- (4) As the defendants commenced their counterclaim against the plaintiff in the High Court of Malaya at Kuala Lumpur prior to the plaintiff becoming the Sultan of Selangor from 22 November 2001, does the High Court of Malaya continue to have jurisdiction to adjudicate the defendants' counterclaim in the light of art 181(2), art 182(2), and art 182(3) of the Federal Constitution?
- (5) If the answer to question 4 is in the affirmative, are the defendants nevertheless required to obtain consent from the Attorney General in the light of art 183 of the Federal Constitution?

- A** (6) If the answer to question 4 is in the negative, does the High Court of Malaya or any other court constituted under Part IX of the Federal Constitution have jurisdiction and/or power to transfer the defendants' counterclaim to the Special Court, which is constituted under art 182, Part XV of the Federal Constitution.
- B** (7) If the answer to question 6 is in the negative, does the defendants' counterclaim have to be withdrawn and refiled in the Special Court?

For ease and convenience, I will in this judgment refer to the parties by their original citation of plaintiff and defendants who are the appellant and respondents herein.

- C** Submissions from learned counsel on both sides and from the learned senior federal counsel who held a watching brief for the Federal Attorney General actually commenced on 17 October 2002 after two previous adjournments on 31 July 2002 and 23 September 2002 respectively, granted at the request of both sides on the ground that they were close to resolving their differences shortly. A third request for adjournment by
- D** counsel for the defendants for another reason was refused. The case was not resolved and hence the hearing. At its conclusion on the same day, we unanimously answered questions 1, 2, 4 and 6 in the negative, and questions 3 and 7 in the affirmative but declined to answer question 5 on the ground that it did not arise in the light of our answer to question 4.
- E** I now give my reasons.

The facts agreed between the parties are as follows:

- F** 1 On 6 May 1998, the plaintiff filed a writ of summons and statement of claim against both defendants. On 3 July 1998 the defendants filed a defence and counterclaim which was subsequently amended pursuant to a court order dated 7 January 1999. On 17 July 1998, the plaintiff filed his reply and defence to the counterclaim.
- G** 2 On 24 April 1999, the plaintiff was appointed the Regent of Selangor to exercise the functions as 'Sultan' when his father Al-Marhum DYMM Sultan Salahuddin Abdul Aziz Shah ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed the 11th Yang di-Pertuan Agong.
- H** 3 On 30 July 2001, the High Court in Kuala Lumpur, by consent of the parties, ordered four questions to be referred to the Federal Court by way of a special case under s 84 of the CJA.
- I** 4 Of the four questions, the Federal Court answered only question 1 but not questions 2, 3 and 4. Question 1 was worded as follows:
- (1) Whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as 'Sultan' is a 'Ruler' for the purposes of arts 181, 182 and 183 of the Federal Constitution (as amended by Act A848) having regard to the aforesaid provisions and the interpretation of 'Ruler' as defined in art 160 of the Federal Constitution?

The Federal Court answered it in the negative.

- 5 On 21 November 2001, Sultan Salahuddin Abdul Aziz Shah Al Haj passed away. A
- 6 On 22 November 2001, the plaintiff was proclaimed the Sultan of Selangor and he is the present Ruler of Selangor.
- 7 On 6 May 2002, by consent of the parties the High Court in Kuala Lumpur once more ordered the reference of the seven questions listed in the opening paragraph of this judgment to the Federal Court. B

For fuller background facts and a clearer picture of the dispute between the parties, it is necessary to elaborate on certain agreed facts from materials available in the appeal record:

- (a) on agreed fact no 1, it is a fact that the original action and the counterclaim therein referred to is identified as the Kuala Lumpur High Court Suit No D1-22-1350- 1998 ('the suit') from which the first and second references to the Federal Court were ordered by the High Court on 30 July 2001 (Federal Court Special Case No 02-2001) and on 6 May 2002 (Federal Court Special Case No 01-2002) respectively. Further, the cause of action in the writ and statement of claim was in contract based on an agreement in writing dated 10 July 1995 ('the SPA') entered into between the plaintiff as vendor and the first and second defendants as purchasers for the sale and purchase of certain shares for the purchase price of RM100m. The claim of the plaintiff was for RM35m being the unpaid balance of the purchase price and also for interest and cost. The amended counterclaim of the defendants was for RM25m based on a supplemental agreement dated 15 January 1996 ('the SA'). Neither the SPA nor the SA was included as part of the record of appeal. There is no dispute that the claim of the plaintiff and the counterclaim of the defendants against the plaintiff are in the plaintiff's personal capacity; C
- (b) on agreed fact nos 2, 5 and 6, HRH Sultan Salahuddin Abdul Aziz Shah Al Haj was until 21 November 2001 concurrently holding the status of the eighth Sultan of Selangor and the 11th Yang di-Pertuan Agong of Malaysia; and D
- (c) on agreed fact nos 3 and 4, the judgment of the Federal Court is reported sub nomine *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor* [2002] 2 MLJ 11 and [2002] 4 MLJ 289. E

The issues posed by questions 1, 4, 2 and 6 are: (a) whether having regard to the change of status of the plaintiff and to arts 181(2), 182(2) and (3) of the Federal Constitution, the High Court continues to exercise jurisdiction to adjudicate on the suit which was commenced before such change of status (issue (a)); and (b) whether the High Court has the jurisdiction/power to transfer the suit to the Special Court (issue (b)). F

Dato Vendargon of learned counsel for the defendants draws attention to the words 'by or against ... the Ruler' in arts 181(2), 182(3) and 183 H

- A** which to him are ambiguous in the absence of a meaning assigned to them in the Federal Constitution. As he sees it, these words are a matter for the Federal Court to construe. He submits that the purposive or the mischief rule of construction applies but not the literal rule which if applied, would require all actions involving a Ruler whether instituted before or after his appointment to be heard in the Special Court. It follows from this that
- B** pending proceedings in the High Court commenced before the change of status would have to be withdrawn and recommenced in the Special Court after the change of status since there is no provision in the law for the transfer of proceeding from the High Court to the Special Court or for the Special Court to order the High Court to transfer such proceeding to itself.
- C** Time would have run against both parties from the commencement of proceeding in the High Court and its recommencement in the Special Court. And he queries what is going to happen if the claim and counterclaim were statute barred. Further, in the case of a litigant who is not a Ruler, under art 183 of the Federal Constitution, the consent of the Attorney General is a prerequisite to the institution of proceedings in the
- D** Special Court and he opines that such litigant would lose his right to counterclaim against the Ruler. He says these are the absurdities if the literal construction is applied which prompted the seven questions asked in this Special Case now before this court for the second time. In the premises, he submits that these words should be so construed as to exclude proceedings pending in the High Court brought by persons who subsequently become
- E** Rulers and that such a result can be achieved by applying the purposive or the mischief rule of construction to the word 'Ruler'.

In this regard, he makes two points:

- (i) Article 182(3) expressly mentions where the cause of action arose but is silent on when it arose. Thus, there is no link in time as to when the cause of action accrued. The point he makes here is that the legislature has not expressly stated whether 'Ruler' there should be looked at, at the time when the cause of action arose or at the time when the matter comes before the court.
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- (ii) Article 183 uses the words 'shall be instituted' as opposed to 'brought' and he notes the absence of the words 'continued with' which creates the problem for the defendants.
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On point (i), he submits that the purposive rule of construction applies so that 'Ruler' there means Ruler at the time when the cause of action arose which takes into account limitation period and the vested rights of the ordinary litigant. He further submits that the court should not read 'when' into art 182(3) with effect from 30 March 1993 the date of coming into force of Act A848 or construe 'Ruler' literally to mean Ruler at the time when the matter comes before the court. On point (ii), he submits that 'instituted' in art 183 means commenced or started.

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As regards the power to order the transfer of proceedings from the civil courts to the Special Court, he submits that the civil courts have no such power and likewise the Special Court has no power to order the transfer from the civil courts to itself.

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To a query from the court, he agrees that limitation is irrelevant to the present case. **A**

At the conclusion of his submission, he answers the questions asked thus:

Question 1: Answer. Yes.

Question 2: Answer. No, if the answer of the court to Question 1 is in the negative. **B**

Question 3: Answer. No.

Question 4: Answer. Yes.

Question 5: Answer. The consent of the Attorney General is not required.

Question 6: Answer. No. **C**

Question 7: Answer. No.

In his outline submission, Mr Lim Kian Leong of learned counsel for the plaintiff addresses on four matters, namely:

(i) Sovereignty of the Ruler **D**

He refers to decided cases and states that sovereignty of the Ruler and sovereign immunity cannot be disputed and have been recognized even before Merdeka and that the ordinary courts had no jurisdiction over the Ruler unless the Ruler submits to jurisdiction. Article 181 affirms and preserves the Ruler's rights and privileges post Merdeka before its amendment in 1993. Even with the 1993 amendments, sovereignty of the Ruler is still preserved although sovereign immunity has been limited by the amendment to art 181(2) and the insertion of arts 182 and 183 which deal with proceedings by or against the Ruler. **E**

(ii) Jurisdiction of the ordinary courts and the Special Court in proceedings by or against the Ruler **F**

He repeats that the ordinary courts did not enjoy any jurisdiction in such proceedings even before 1993 unless the Ruler submits to jurisdiction. The 1993 amendments do not confer jurisdiction on the High Court over the Ruler. He says that the Special Court has been specifically created to deal with proceedings by or against the Ruler and arts 181, 182 and 183 expressly confer exclusive jurisdiction on the Special Court. **G**

(iii) The suit comes within arts 181, 182 and 183

Various pre-emptive arguments are made by the appellant under this subhead in anticipation of those to be advanced by the respondent. They are omitted here and will not be dealt with because they seem off the mark from arguments actually canvassed in court by the defendants. The only submissions of significance are those in paras 6.15 and 6.16 of his outline submission. He makes the point there that upon the plaintiff becoming the Ruler the attribute of sovereignty attaches to him and immunity from legal proceedings, as a result. Thus he argues that the question is not when the suit is filed and it matters not whether it is filed before or after the plaintiff **H**

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A becomes Ruler. The fact that the plaintiff is the Ruler, he concludes, brings the plaintiff within the provisions of arts 181, 182 and 183 that is to say, within the jurisdiction of the Special Court and not the High Court. The suit must therefore be heard in the Special Court and prior consent of the Attorney General under art 183 is required for the counterclaim in the suit.

B (iv) Power to transfer the suit

C He concedes that the Special Court is a creature of its own, meaning that the Special Court is a separate establishment from the ordinary courts. He further concedes that there are no express provisions for the transfer of proceedings between the ordinary courts and the Special Court. Nonetheless, he says that both the Federal Court and the High Court possess inherent powers to transfer the suit to the Special Court because firstly, the Special Court is not dissimilar from the ordinary courts in that it deals with both civil and criminal cases although exclusively with claims by or against the Ruler; and secondly, to all intents and purposes the Special Court is a court of law which applies the same principles of law and procedure.

D In conclusion, he submits that the questions asked should be answered thus:

Questions 1 and 4: Answer. No.

E Questions 2 and 6: Answer. Yes (with further order or direction on transfer).
Question 3: Answer. If this honourable court is of the view that there is no power to transfer or that the ordinary courts should not order a transfer, then the answer should be Yes.

F Question 5: Answer. This question need not be answered if the answer to Question 4 is No.

Question 7: Answer. If this honourable court is of the view that there is no power to transfer or that the ordinary courts should not order a transfer, then the answer to this question should be Yes.

Dato' Abdul Aziz, the learned senior federal counsel makes three points in his submission:

G (a) the Attorney General's stand is that art 182 gives exclusive jurisdiction to the Special Court and cites an excerpt from the judgment of Mohd Azmi FCJ in *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'ayatuddin Al Mu'adzam Shah* [1996] 1 MLJ 617 in support of that stand;

H (b) once the plaintiff is made a Ruler, he is protected regardless of when he was made Ruler. Otherwise, enforcement by the civil court would be impractical. In this regard, he cites *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor* [1999] 1 MLJ 266 and adds that here he agrees with learned counsel for the plaintiff;

I (c) the High Court has no power to transfer the suit to the Special Court and neither does the Special Court have power to order the transfer to itself.

The legal result of agreed fact nos 5 and 6 taken together is a change — both status wise and functionally of the plaintiff from a Crown Prince and Regent to a Sultan and Ruler of the State of Selangor. That transition took place on 21 November 2001 upon the demise of his father. The fact of his accession as the ninth Sultan of Selangor was published to the public by a proclamation issued on 22 November 2001. From 21 November 2001, he is constitutionally the Ruler of the State of Selangor. He is a hereditary Malay Ruler determined in accordance with the Constitution of the State of Selangor 1959, a successor to his father who was the eighth Sultan of Selangor and the former Ruler of that State. The right of succession as the Ruler of the State of Selangor is guaranteed to the plaintiff by art 71(1) of the Federal Constitution (see *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29). He is thus a 'Ruler', like his father, in the full sense of that word in art 181(1) of the Federal Constitution following the construction and meaning of 'Ruler' determined by the Federal Court in *Dato Menteri Othman*. This means that he is a Malay, of royal blood, a descendant of Sultan Hisamuddin Alam Shah, a male who professes the Muslim religion and possesses the four attributes namely, sovereignty, prerogatives, powers and jurisdiction in art 181(1). What differentiates him now as a Ruler from his previous status as a Regent is the most important attribute of sovereignty that he now possesses and which was previously lacking in him as a Regent. *Halsbury's Laws of England* (4th Ed) Vol 1 states the position of the Sovereign (Ruler), thus:

897 The Sovereign never dies

... the Sovereign is regarded legally as immortal, the maxim of law being that 'the King never dies'. The death of the Sovereign in her natural body is therefore termed legally her demise, meaning the transfer of the Kingdom to her successor.

851 Accession

On the death of the reigning sovereign the Crown vests immediately in the person who is entitled to succeed, it being a maxim of the common law that the King never dies. The new Sovereign is therefore entitled to exercise full prerogative rights without further ceremony.

The fact of accession of the new sovereign is published to the nation by a proclamation which is issued as soon as conveniently may be after the death of the former Sovereign by ...

877 Attributes of the Sovereign

The special privileges and prerogatives allowed by the law to the Sovereign are attributed to her primarily in her regal capacity or body politic. But it appears that, in general, such privileges and prerogatives attach to the Sovereign also in her natural capacity, the greater drawing to itself the less, and imbuing it, as it were, with its qualities. ... In legal contemplation the Sovereign never dies, and the mention of the Sovereign in statutes includes successors. ...

These principles of law stated in *Halsbury's* are germane to the right of succession in art 71(1) of the Federal Constitution and subsumed there under; and they apply to the plaintiff as Ruler of the State of Selangor (see

- A RH Hickling, *Malaysian Public Law* at p 71 last paragraph). Clause (1) of art 71 so far as is relevant is couched in language as follows:

The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State; ...

- B The right of the plaintiff to succeed as the Ruler of the State of Selangor is expressly recognized in art 6(1) and (2) of the Constitution of the State of Selangor and such right is doubly entrenched by arts 71(1), 38(4) and 159(5) of the Federal Constitution. Thus, on the demise of his father, the State of Selangor is transferred to the plaintiff as his successor. The Crown vests immediately on the plaintiff who is entitled to succeed and the plaintiff as the new Ruler is therefore entitled to exercise full prerogative rights without further ceremony. And references to 'Rulers' and 'the Ruler of a State' in arts 181(1), (2), 182(2), (3) and 183 include successors (see the definition of 'Sultan' in art 4(1) of the Constitution of the State of Selangor).

- D As a consequence of this attribute of sovereignty, he would have been immuned by virtue of art 181(2) before its amendment by the Constitution (Amendment) Act 1993 (Act A848) to all proceedings against him in his personal capacity if brought in the ordinary courts established under Part IX of the Federal Constitution (see *Dato Menteri Othman's* fourth holding in the headnote and also *Faridah Begum* at p 631 per Mohd Azmi FCJ). In this context, *Halsbury's* states thus in paras 896 and 966:

896 The Sovereign can do no wrong

- F The law clothes the Sovereign's person with absolute perfection; hence it is a maxim of the common law that 'the King can do no wrong,' and no remedy lies against the Sovereign in person in civil or criminal matters, for the prerogative is created for the benefit of the people and cannot be exerted to their prejudice.

966 Proceedings against the Sovereign in her private capacity

- G At common law no proceeding, civil or criminal, was maintainable against the Sovereign in person, for it was said that as the courts were her own they could have no jurisdiction over her. These rules continue to apply to the Sovereign in her private capacity.

- H However, such sovereign immunity referred to in para 896 above has been demolished by Act A848 so that the plaintiff, although a Ruler now, is liable to be sued in his personal capacity (see RH Hickling, *Malaysian Public Law* at p 72 last paragraph). As Ruler, the plaintiff may also sue in his personal capacity. Such proceedings whether by or against the plaintiff (a Ruler) in his personal capacity must be brought in the Special Court (arts 181(2) and 182; *Faridah Begum* at p 622 per Eusoff Chin Chief Justice) for the rule referred to in para 966 continues to apply in Malaysia to the Ruler of a State in relation to proceedings brought in the ordinary courts established under Part IX of the Federal Constitution.

- I The Special Court is conferred exclusive jurisdiction to try all civil cases by or against the Ruler notwithstanding where the cause of action arose

and further, that its majority decision is final and conclusive and shall not be challenged or called into question in any court on any ground (see art 182(3) and (6)).

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By art 182(4), the Special Court is conferred the same jurisdiction and powers vested in the inferior courts, the High Court and the Federal Court by the Federal Constitution or any federal law. By the same clause it is also provided that the Special Court has a registry of its own in Kuala Lumpur. Pursuant to cl 7 of art 182, Rules of the Special Court 1994 were made and published as PU(A) 525/94 which, inter alia, set up the registry of the Special Court located at the Registry of the Federal Court at Kuala Lumpur under a registrar and a seal of its own and provide for the procedure and practice of the Special Court.

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C

It is clear to me that the first point to be established by the plaintiff under art 182(3) is that he is a Ruler in the full sense of that word the determination of which settles the proper forum wherein proceedings are to be brought that is to say, in the Special Court or in the High Court as the case may be. If he is a Ruler then he comes within the exclusive jurisdiction of the Special Court; he does not come within the jurisdiction of the High Court, an ordinary court established under Part IX of the Federal Constitution which never had jurisdiction over Rulers before or after the amendments introduced by Act A848, and civil cases involving him must therefore be brought in and tried by the Special Court. If he is not a Ruler then he does not come within its exclusive jurisdiction; he comes within the jurisdiction of the High Court. The combined effect of arts 181(2), 182(2) and 182(3) is that civil proceedings by or against a Ruler in his personal capacity must be brought in and tried by the Special Court.

D

E

It is an agreed fact that on and after 22 November 2001, the plaintiff is officially the Ruler of Selangor in the full sense of the word 'Ruler' in arts 181, 182 and 183. It must necessarily follow from this fact that if the suit were brought on or after that date, there would have been no dispute by the defendants that it would have been properly brought in and triable by the Special Court.

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The problem here is that the suit was brought in the High Court in Kuala Lumpur before 22 November 2001 and was pending trial there. Dato Vendargon takes the stand that the suit should remain in the High Court to be tried there and that 'Ruler' in arts 181, 182 and 183 should be construed to mean Ruler at the time when the cause of action arose — not a Ruler when the proceeding is before the court because art 182(3) is specific on where but is silent on when the cause of action arose. Both Mr Lim and the senior federal counsel take the stand that the suit should be tried in the Special Court for the same reason, namely, because the plaintiff is now the Ruler of the State of Selangor regardless of when he became Ruler.

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Having regard to the principles of law on accession, the Latin maxim *rex nunquam moritur* stated in *Halsbury's*, and art 181(1), I conclude that time, and therefore when the cause of action arose, is understood to be irrelevant to the construction or meaning of 'Ruler'. For that reason, it appears to me unnecessary to spell out 'when' the cause of action arose in

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- A art 182(3). In short, 'Ruler' in arts 181, 182 and 183 is a Ruler for all time which includes his successor in office. Upon his accession as a Ruler, I hold on issue (a) above that the High Court ceased to have jurisdiction over the plaintiff and thus could no longer continue to exercise jurisdiction to adjudicate on the suit. Article 181(2) operates to bar the suit in the High Court (see *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64). And I
- B hold further that upon accession, the plaintiff comes within the exclusive jurisdiction of the Special Court. He can sue or be sued in his personal capacity only in the Special Court established under Part XV of the Federal Constitution compatible with his newly acquired status. That is the position of the plaintiff vis-a-vis the defendants under the Federal Constitution. To
- C construe in the way as Dato Vendargon submits, is to import a limitation on the meaning of 'Ruler' in art 181(1) which would be inconsistent with the Latin maxim, would lead to discontinuity in the office of the Ruler and exclude his successor in office from invoking arts 181(2) and 182(2) besides demeaning the plaintiff, a Ruler, by placing him on the same footing as an ordinary litigant in the High Court. The constitutional position of the
- D plaintiff upon accession as Ruler is safeguarded by art 70(1), and by art 38(4) no law directly affecting his position and dignity shall be passed without the consent of the Conference of Rulers.

The fate of the suit pending in the High Court is thus obvious. It must be withdrawn.

- E The Federal Constitution, by art 183, provides a solution to the problem without compromising the dignity and position of the plaintiff as Ruler or the rights of the defendants to counterclaim against the plaintiff in the Special Court subject only to the defendants having obtained the consent of the Attorney General for the counterclaim which corresponds to the *fiat justitiae* in England. Such consent is exercisable by him personally.
- F It follows therefore that the action will have to be commenced afresh by the plaintiff in the Special Court and the consent of the Attorney General sought for and obtained to counterclaim against the plaintiff.

- Whether the Special Court has the power to order the High Court to transfer the suit to itself, is in my view irrelevant because it is not raised specifically and neither can it be said to be covered by questions 2 and 4.
- G Consequently, I refrain from answering or express any view on it.

- On issue (b) above, from what has already been said above it is clear that the Special Court created under Part XV of the Federal Constitution is an establishment entirely separate and removed or severed from the ordinary courts created under Part IX. The Special Court is a court created for the ruling class over which it has exclusive jurisdiction whereas the ordinary courts which constitute the judiciary is for the ordinary litigants. Further, as earlier said, waiver aside, the ordinary courts never had jurisdiction over the Rulers.
- H

- By art 121(1), it is expressly provided that 'the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.' Such powers of transfer are contained in the CJA and the Subordinate Courts Act 1948 ('the SCA') and do not extend to the
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Special Court. The jurisdiction of the Special Court is both original and final, the decision of which cannot be challenged in any court, on any ground (see RH Hickling, *Malaysian Public Law* at p 73). It seems out of place to mention the inherent powers of the High Court in the light of art 121(1).

Thus, I hold on issue (b) that the High Court has no powers to transfer the suit to the Special Court.

For all these reasons stated, I answered the questions asked in this reference in the manner indicated earlier in this judgment. By consent each party bears its own costs and so it was ordered.

Both the learned President of the Court of Appeal and the Chief Judge of the High Court in Malaya have read this judgment in draft and expressed their agreement and the reasons therefor.

Order accordingly.

Reported by Lim Lee Na

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